## MUTHURAKU v. KUALA LUMPUR MUNICIPALITY WORKERS TRADE UNION

**[O.C.J. (Raja Azlan Shah J.) January 6, 1972]**

**[Kuala Lumpur — Civil Suit No. 704 of 1971]**

*Trade Unions — Election of office bearers — Dispute between member and union — Union rules providing reference to arbitration or to the Registrar of Trade Unions — Whether court has jurisdiction to hear and adjudicate — Trade Union Ordinance, 1959, ss. 44-46 Part VI r. 26.*

*Industrial Law — Dispute — Procedure — Election of office bearers of trade union — Power of court to adjudicate over — Case stated, by way of — Trade Union Ordinance, 1959, Part VI.*

*Interpretation — Construction of statutes — Creation of obligation and enforcement in specified manner — Trade Union Ordinance, 1959, Part VI.*

The plaintiff, the president of the defendant union, sought for a declaration that the emergency meeting of the union held on July 18, 1971, had no power to decide matters pertaining to the election of officers of the said union, and for an injunction restraining the said union from proceeding to hold a general meeting on September 29, 1971, or from convening or holding any other general meeting.

On August 28, 1971, the plaintiff obtained an interlocutory injunction. The defendant union applied to set aside the interlocutory injunction and all subsequent proceedings on the ground that the court had no jurisdiction to entertain the plaintiff's claim.

**Held,** allowing the application: (1) when a statute creates an obligation and enforces the performance in a specified manner, that performance cannot be enforced in any other manner;

(2) although there was clearly a dispute regarding the election of officers, the court is not empowered to adjudicate over the matter until the procedure for resolving a dispute in Part VI of the Trade Union Ordinance has been exhausted;

(3) the procedure by which a court has jurisdiction is by way of a case stated under the provisions of section 45 of the Trade Union Ordinance.

*Case referred to:-*

(1) *Kolandaisamy* v. *Annamalai & The Harbour Trade Union (Selangor) Port Swettenham* [1968] 1 M.L.J. 222 at p. 223.

APPLICATION.

*D. P. Vijandran* for the plaintiff.

*M. S. Naidu* for the defendant.

*Cur. Adv. Vult.*

**Raja Azlan Shah J.:** The plaintiff is the president of the defendant union. He has filed a writ claiming for a declaration that the emergency meeting held on 18th July, 1971, had no power to decide matters pertaining to the election of officers of the said union and also an injunction restraining the said union from proceeding to hold a general meeting on 29th September, 1971, or from convening or holding any other general meeting. On 28th August, 1971, the plaintiff obtained an interlocutory injunction. The defendant union now applies to set aside the interlocutory injunction and all subsequent proceedings on the ground that this court has no jurisdiction to entertain the plaintiff's claim.

The trouble arose in this way. At three meetings held on 2nd and 23rd May and 13th June 1971 a majority of the union members proposed that there should be wider Malay participation in union affairs *i.e.*, that the post of president, assistant secretary and three executive council members should be filled in only with Malay members. An extraordinary general meeting was convened on 18th July, 1971. At that meeting a secret ballot was taken to determine the proposal. By a majority of one the union resolved in favour of the proposal. At the nomination meeting which followed immediately afterwards, nominations were called for and recorded. The plaintiff's name was proposed and seconded as vice-president. He accepted the nomination but on 25th August, 1971, he withdrew.

The plaintiff now says that the resolution passed on 18th July, 1971, was *ultra vires* because it contravenes rule 6 of the defendant union rules which bestows equal rights to all members and rule 25 which provides for the election of officers by secret ballot in accordance with the prescribed procedure.

Part VI of the Trade Union Ordinance, 1959 (sections 44-46) prescribes the manner in which a dispute may be resolved. I need not go into detail with the relevant sections; that is reproduced in the judgment of Gill J. (as he then was) in *Kolandaisamy* v. *Annamalai & The Harbour Trade Union (Selangor) Port Swettenham.*[1] In other words Part VI read with rule 26 of the union rules provides two methods of resolving a dispute. One is by arbitration and the second is by referring the matter to the Registrar of Trade Unions. It is common ground that the first method is not open to the parties. With regard to the second ground the plaintiff in his affidavit sworn on 28th August, 1971, said that on 3rd May, 1971, he went to see the registrar and requested him:

"for a clarification on the new move that only Malay members could be nominated for the post of president. He said there is no such provision in the rules and regulations of our association."

There is no certificate or documentary evidence of the registrar's decision. The general secretary of the defendant union in his affidavit sworn on 10th September, 1971, said:

"that when the nomination meeting was held again on 13.6.'71 the plaintiff had not made any reference to the Registrar of Trade Unions of the dispute as to Malay participation for his decision as provided in the constitution of the said union."

From that it is plain there is nothing to show from the affidavit that reference was made to the registrar and if that is so, then this method of resolving the dispute was not pursued.

Now section 44(6) of the Trade Union Ordinance provides that where no decision is made on a dispute within 40 days after application to the union for a reference under its rules, the member or person aggrieved may apply to a sessions court and the sessions court may hear and determine the matter in dispute. Section 44 enacts that the court or registrar may at the request of either party state the case for the opinion of the High Court on any question of law. In other words where no reference is made to the registrar the parties may resort their differences to the sessions court who may in turn state the case

to the High Court. The High Court will then take cognisance of the matter.

In my opinion this is clearly a dispute regarding the election of officers. Before the plaintiff can say that the resolution passed on 18th July, 1971, is invalid he must come to court for a declaration that it is so. Before this court can make a declaration it must be empowered to adjudicate over the matter. That brings me to defendants' argument that this court has no jurisdiction. Before this court can have jurisdiction over the matter the procedure for resolving a dispute as prescribed in Part VI must be exhausted and the only way in which this court can have jurisdiction over the matter is by way of a case stated under the provisions of section 45 of the Trade Union Ordinance. In my view this case exemplifies the principle that when a statute creates an obligation and enforces the performance in a specified manner, that performance cannot be enforced in any other manner.

I would allow the application with costs. Although the application gives the defendant union their whole remedy before the action is tried, that should be so since the plaintiff has no cause of action.

*Application allowed.*

Solicitors: *Athinahappan & Co.; Braddell & Ramani.*

---

## WONG LOK KHIAM v. DATO PETER LO SU YIN & ORS. (NO. 2)

**[O.C.J. (B.T.H. Lee J.) January 7, 1972]**

**[Kota Kinabalu — Notice of Motion No. 3 of 1971]**

*Practice and Procedure — Injunction — Interim injunction — Dissolution of — Matters to be considered by the court.*

*Societies — Election — Interim injunction to restrain newly elected office bearers — To keep matters in status quo.*

This was an application to dissolve the *ex parte* interim injunction dated October 18, 1971 granted by the Chief Justice of Borneo to restrain the defendants by themselves their agents and servants or otherwise from acting as the newly elected office bearers and delegates of the Sabah Chinese Association and from taking control of the headquarters of the Sabah Chinese Association and from taking possession of any documents, papers or files belonging to the association. On November 15, 1971, Seah J. granted the plaintiff an extension of the interim injunction until trial of the suit ([1972] 1 M.L.J. 138). In his ruling Seah J. *inter alia* said:

> "The Notice of Motion No. 3 of 1971 to discharge the said interim injunction remains on the cause list and has not been struck out or dismissed. He and the other defendants named herein are at liberty to come before the court with a fresh motion on another day when counsel for the defendant is ready to proceed with the hearing of the case".

**Held,** dismissing the application: as Seah J. had ruled that the defendant should come to court with a fresh motion, therefore the defendants should apply by a new motion to discharge the interim injunction.

*Per curiam:* The granting of an injunction being a very serious matter in that it restrains the opposite parties from the exercise of their rights the court does not issue the injunction (in this case that the interim injunction should continue) unless it is thoroughly satisfied that there is a strong *prima facie* case in favour of the plaintiff. Where the question is of an election to an office it is not merely the parties that are interested in it but the members of the association are also interested in seeing that proper persons are put in office to conduct and to control the affairs of the association. An injunction should be issued in such cases only when the court is so clearly satisfied about the merits of the plaintiff's claim that it thinks that in all probability the plaintiff will succeed.

*Cases referred to:-*

(1) *Harman Pictures, N.V.* v. *Osborne & Ors.* [1967] 1 W.L.R. 723.

(2) *Donmar Productions Ltd.* v. *Bart & Ors.* [1967] 1 W.L.R. 740.

NOTICE OF MOTION.

*Lim Kean Chye* (*W. K. Loo* with him) for the applicant/plaintiff.

*Dato' Eusoffe Abdoolcader* (*Nicholas Fung* with him) for the respondents/defendants.

**B. T. H. Lee J.:** This is an application to dissolve the *ex parte* interim injunction dated 18th October, 1971, granted by the Chief Justice of the High Court of Borneo to restrain the above defendants by themselves, their agents and servants or otherwise from acting in the capacity as the newly elected office bearers and delegates of the Sabah Chinese Association (which I shall call "association") and from taking control of the headquarters of Sabah Chinese Association at No. 6, Beach Street, 1st Floor, Kota Kinabalu. and from taking possession of any documents, papers or files belonging to the association and to keep matters in *status quo* prior to the meeting convened by its President, Dato' Peter Lo Su Yin on the 16th October, 1971, until the 15th November, 1971.

By notice of motion filed by the plaintiff dated 4th November, 1971, the interim injunction granted on the 18th October, 1971 was extended until trial of Civil Suit No. 340 of 1971, by Seah J. on 15th November, 1971.

I have been addressed at great length by learned counsel for the parties on the question of *prima facie* case, balance of convenience, irreparable injury, damages, protection of alleged right or interest and also the question of maintenance and preservation of the *status quo* pending the trial.

It is, I think, unnecessary to state again the principles which have to be kept in mind in granting or refusing to grant the application.

These principles have been stated and restated in several decisions and I need only refer to the most recent cases of the English Court of Appeal, notably *Harman Pictures, N.V.* v. *Osborne & Ors.*(1) and *Donmar Productions Ltd.* v. *Bart & Ors.*(2).

Guidance is also to be found in *Kerr* on Injunctions (6th Edition) page 2, which reads as follows: —

> "The interlocutory injunction is merely provisional in its nature, and does not conclude a right. The effect and object of the interlocutory injunction is merely to keep matters in *status quo* until the hearing or further order. In interfering by interlocutory injunction, the court does not in general profess to anticipate the determination of the right, but merely gives it as its opinion that there is a substantial